IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CWP No. 1204 of 2007
Date of decision: May 18, 2007.

Smt. Shanti ...Petitioner

Versus

State of Haryana and another ...Respondents.

(2) CWP No. 1279 of 2007

R.K.Enterprises Ltd. and another ...Petitioners

Versus

State of Haryana and another ...Respondents.

(3) CWP No. 1314 of 2007

Harpal and others ...Petitioners

Versus

State of Haryana and others ...Respondents.

(4) CWP No. 1360 of 2007

Dharampal and others ...Petitioners

Versus

State of Haryana and others ...Respondents.

(5) CWP No. 2109 of 2007

Vinod Kumar Madan and another ...Petitioners

Versus

State of Haryana and another ...Respondents.

(6) CWP No. 2148 of 2007

DN Gupta ...Petitioner

Versus

State of Haryana and another ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. Arun Jain and Mr. Shailender Jain, Advocate,
for the petitioners.
Mr. H.S. Hooda, Advocate General, Haryana assisted by
Mr. Ashish Kapoor, Additional Advocate General, Haryana and
Mr. RS Kundu, Additional Advocate General, Haryana.

K.S.GAREWAL, J.

This judgment shall dispose of CWP Nos 1204, 1279, 1314, 1360, 2109 and 2148 of 2007. Description of the petitioners' land involved in the present cases are given below:-

CWP No.	**Petitioner (s)/ person (s) interested**	**Village**	**Acquired Area in Kanals & Marlas**	**Remarks**
1204	Smt. Shanti	Nathupur	2-14	House

1279	R.K.Enterprises Pvt. Ltd. & Anr.	Nathupur	5-8	Residential house/office
1314	Harpal and 6 Ors	Sikenderpur Ghosi	each petitioner owns 100 square yards	
1360	Dharampal and 6 Ors	Nathupur	Plot-petrol pump	CLU granted conversion charges of Rs. 40 lacs paid.
2109	Vinod Kumar Madan & Anr.	Not mentioned	Area not mentioned	Plot No. 450 Block-A, Sushant Lok Gurgaon.
2148	D.N. Gupta	Not mentioned	Area not mentioned	Plot No. 448 Block A, Sushant Lok Gurgaon.

However, for the purpose of convenience, basic facts have been culled out from CWP No. 1204 of 2007.

The petitioner's property was sought to be acquired through notification dated November 24, 2006 for the public purpose of development and utilization of land for the alignment of Delhi Metro Rail Corporation (DMRC) project for Gurgaon by invoking the urgency provisions under Section 17 (1) of the Land Acquisition Act, 1896 (hereinafter referred to as the Act). The requirement of inviting objections under Section 5-A of the Act was dispensed with. Section 4 notification was followed by declaration under Section 6 of the Act dated November 27, 2006.

According to the petitioner, her property was 2 kanal 14 marla of land in Nathupur and she had constructed a residential house on the said property. The existence of the house was apparent from the jamabandi for

the year 2000-2001, Annexure P/1, which shows presence of gairmumkin kothi on 2 kanals 14 marlas.

Earlier on October 3, 2006, a notification under Section 4 had been issued in respect of a part of the acquired land for the public purpose of development and utilization of the land for residential, commercial and institutional purposes of Sectors 24 and 25-A, Gurgaon. The petitioner had filed objections on November 2, 2006 and claimed that her land was a small pocket surrounded on all sides by property that had been developed by private colonizers, therefore, the acquisition of her land was not justified. The petitioner was invited for a hearing on her objections but before these could be decided, the Government of Haryana issued the present notification under Section 4 on November 24, 2006 stating that the purpose of acquisition was alignment of DMRC project.

The acquisition was challenged on the grounds that (i) there was no urgency in the proposed public purpose--alignment of DMRC project. The proposed acquisition was not such that was required to be executed overnight by depriving the persons interested of the valuable opportunity to present their objections, (ii) the petitioner's land was located at such a spot that it was sandwiched on both sides by huge complexes which have been spared. If these structures did not interfere in the alignment then how could the petitioner's property be acquired, (iii) the petitioner could substantiate all her objections if she got a reasonable opportunity to do so but that opportunity had been denied to her, (iv) the proposed acquisition was a futile exercise since the land cannot be effectively used because the land was far away from the metro, (v) the acquisition was unwarranted and colossal wastage, (vi) it was unjust on the

part of the State of Haryana to acquire the built up property, (vii) there had been no application of mind on the part of the respondents before the notification was issued, (viii) the land was located on the Mehrauli--Gurgaon Road which was an extremely important road and the acquisition would be extremely costly, (ix) the notification under Section 17 of the Act had not been issued in strict compliance with the statutory provisions, no publication had been made in the two daily newspapers, public notice of the notification had also not been given in the locality, (x) the acquisition proceedings suffered from error patent on the face of the record, (xi) the acquisition negatived the concept of planned development, the metro was from Central Secretariat, Delhi to Gurgaon. On the Delhi side no land was being acquired, and under the guise of the project lands of small land owners were being acquired while the lands of big and influential persons persons were being left out, (xii) no public purpose was being achieved by the acquisition, (xiii) the acquisition proceedings were contrary to the provisions of Article 300-A of the Constitution of India, (xiv) the land was being acquired without an opportunity of hearing, (xv) perusal of both the notifications showed that no urgency existed which deprived the land owners of their land without an opportunity to file objections.

On behalf of the respondents, written statement was filed by the Land Acquisition Collector, Urban Estates, Gurgaon. Preliminary objections were raised that publication had been properly carried out, notification under Section 4 was published in the gazette of November 24, 2006. The substance of the notification was also published in two newspapers-Amar Ujjala (Hindi) on November 24, 2006 and National Herald (English) on November 29, 2006. The proclamation was also done

in the village by the chowkidar by beating of empty cannister. An entry regarding the notification was made by the Halqa Patwari in the roznamcha on December 7, 2006.

The Government had decided to issue the declaration under Section 6 read with Section 17 (1) of the Act and this was done on November 27, 2006 when the notification was published in the gazette and also in two daily newspapers-Hari Bhoomi (Hindi) and National Herald (English) on November 29, 2006. An entry was also made by Halqa Patwari in the roznamcha on December 7, 2006. The land had been acquired for public purpose to provide public amenity. The Award was announced on January 25, 2007 and the possession of the land was handed over to the Estate Officer, HUDA on the same day, free from all encumbrances. 100% of the compensation was offered to the owners on the date of the award.

In reply on merit, the respondents stated that the land in dispute was vacant at the time of the issuance of the notification. It was admitted that a part of the land had been acquired earlier for Sectors 24 and 25 but later a proposal was sent for DMRC project. It was categorically pleaded that part of the land which came in the alignment of DMRC could be covered by the present acquisition but will not be included in the declaration issued for the earlier acquisition. It was also categorically stated that the land in dispute was to be used for parking, was adjacent to the exit and entry for the metro station. Award 37 (11.56 Acres land in Sikenderpur Ghosi), Award 38 (7.38 acres in Nathupur), Award 39 (0.64 in Sarhaul) and Award 40 (0.86 acres in Sukrali) had been pronounced on January 25, 2007, and were attached with the written statement. The entry made by the Patwari in the roznamcha in respect of taking over the complete possession of the

acquired lands on January 25, 2007 was also attached with the written statement.

These petitions were filed at a very earlier stage of the acquisition. What has to be determined is whether acquisition should proceed in the usual manner or be put on fast-track by allowing urgency provisions to come into effect. Several judgments regarding urgency provisions were cited before us in order to show that when these provisions are invoked and inquiry into objections suspended, the Government must form an opinion about the existence of the urgency and also the need to dispense with the inquiry into objections. Mere existence of urgency was not by itself enough. The limited right of persons interested to object to acquisition is not to be taken as an empty formality but it is a substantive right which could only be withheld for good and valid reasons. (**Union of India and others Versus Mukesh Hans (2004) 8 Supreme Court Cases 14).**

In Mukesh Hans's case (supra) land was to be acquired for the purpose of "Phool Walon Ki Sair" which was a traditional festival that had started during the Mughal period. It was obvious that such acquisition could not be so urgent that provisions of Section 5-A had to be ignored. The petition filed by the persons interested was allowed by the High Court, holding that the urgency provisions have been invoked without application of mind. The appeal against the High Court judgment was dismissed. On the contrary the Supreme Court in **Union of India and others Versus Praveen Gupta and others (1997) 9 Supreme Court Cases 78** upheld urgency provision in a case where acquisition was for shifting the timber market from the walled city of Delhi to the outskirts, in order to relieve the

traffic congestion in the city. The judgment of the Delhi High Court was over-ruled and urgency provisions upheld.

In **Chameli Singh and others Versus State of U.P. and another (1996) 2 Supreme Court Cases 549**, it was held that the opinion of urgency formed by the Government to take immediate possession was a subjective conclusion based on material before it and was entitled to great weight unless it was vitiated by mala fides or was a colourable exercise of power. The Supreme Court in **Om Parkash and another Versus State of U.P. and others (1998) 6 Supreme Court Cases 1** considered acquisition of land by the State of U.P. for NOIDA by invoking the urgency provision. It was held that the Court could examine whether there was any material before the appropriate authority to enable it to arrive at its subjective satisfaction for invoking the urgency provisions. Delay of more than a month in issuing the notification under section 4 read with Section 17 (4) pursuant to the proposal for urgent requirement of petitioners' land for development of Ghaziabad and delay of nine months in issuing the declaration under Section 6 has not been explained. Therefore, the ground for invoking Section 17 (4) was held unjustified because planned development of a city did not invariably justify invocation of Section 17 (4) of the Act.

From the above judgments and by taking a common sense view of the case, it becomes easily clear that urgency provisions should not be invoked where there is no obvious urgency. Whether or not there is urgency depends on the larger public purpose of the acquisition. Courts have held that a flower festival, development of a township were not urgent, whereas acquisition of land for residence of homeless people and shifting of a

market from a congested area were urgent public purposes.

In the present case, acquisition is for the alignment of the metro-rail under the DMRC project. Gurgaon is an up-coming modern city which has attracted large investments of capital and which requires modern infrastructures as well. The metro--rail project by extension to Gurgaon would connect Gurgaon to Delhi. This is a laudable objective. The metro would relieve the traffic congestion and would also improve mobility of commuters who live in Delhi and work in Gurgaon or who live in Gurgaon and work in Delhi. It must also be appreciated that starting a metro has its own special requirements. Once the line has been aligned along the Mehrauli-Gurgaon Road there has to be adequate provision for stations along the line where passengers can get on and off the metro. Commuters who may not be living in the near vicinity of the metro station would prefer to drive to the station, park the car and take the metro to their destination. Therefore, it is necessary to provide for car parking near the station.

The public purpose in the present case is for the alignment of DMRC project in Gurgaon. The question to be considered is whether filing of objections should have been dispensed with or not ? At this stage, we may examine the likely objections which the respective petitioners would have raised.

The objection of Shanti Devi (CWP 1204 of 2007) is that she has a built up house on the acquired land. The property was earlier sought to be acquired under notification dated October 3, 2006, for development and utilization of residential/commercial/institutional area of Sectors 24 and 25-A, Gurgaon. The petitioner filed objections stating that she had applied for a licence for setting up a commercial complex. The property had still

earlier been notified in 1983 for setting up a residential colony but on the basis of the representation of small land owners, the notification was withdrawn. Subsequently, large part of the area covered by the 1983 notification was utilised for setting up of commercial and residential colonies. The petitioner had constructed a house on the property which was surrounded on all sides by commercial complexes. The site plan Annexure P/6 showed the petitioner's property. Similarly site plan Annexure R/3 also depicted the petitioner's property but did so with more clarity. Site plan Annexure R/3 shows the three pockets of land, G3, G4 and G5 for the two parking lots and the ancillary building. Adjacent to the petitioner's property is the property of Dharampal (petitioner in CWP 1360 of 2007). On the other side of the line is the property of R.K. Enterprises (petitioner in CWP 1279 of 2007). These areas have been marked as parking and are part of the facilities to be provided to the Garden Estate Station. Other areas shown in site plan Annexure R/3 are the exit/entry to the station on both sides of the line as well as service roads. An ancillary building has also been shown, presumably the station proper.

R.K. Enterprises (CWP 1279 of 2007) has the grievance that they own 5 Kanals 8 Marlas of land which has been recorded as gairmumkin colony in the revenue record. Their property was not included in any earlier notification but has come under the present notification for the first time. Their property has also been depicted in the site plan Annexure R/3 filed by the respondents with the written statement.

Petitioner-Harpal and seven others (CWP 1314 of 2007) are owners in possession of small plots of 100 square yards each. These had been allotted to them by the Government of Haryana under the 20 Point

Programme in 1976. The petitioners received notices under the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 in 2001. These notices were contested and the Tribunal held that the petitioners had not violated the provisions of the Act because the allotment to them was by the Government. The petitioners filed their respective sanads, jamabandies, site plans and photographs of their property as annexures alongwith their petition. It was also submitted that the plots had been given to them under the scheme to uplift the down-trodden and for construction of houses as envisaged under the Punjab Village Common Lands (Regulation) Act 1961. Therefore, the petitioners would have had several valid objections to the acquisition if they had been granted an opportunity to do so. The opportunity was denied to them on account of the urgency involved.

The case of Dharampal and six others (CWP 1360 of 2007) was that they had applied for permission for installing a petrol pump. Various authorities had granted them permission. They had also applied to the Director, Town and Country Planning Haryana, Chandigarh to change the land use. This permission too had been granted, conversion charges of Rs. 40 lacs paid and yet the property sought to be acquired and they had been deprived of their valuable right to object.

Vinod Kumar Madan and D.N. Gupta (CWP 2109 and 2148 of 2007, respectively) owned residential plots in Sushant Lok and claimed right to file objections on the ground that they had purchased these plots in a licenced area of residential colony and the plots should be released.

It has been noted above that the metro to Gurgaon constitutes a huge value addition to an already well developed and expanding 21st century

metropolis. The need for the metro may not be urgent but the need for acquiring suitable land for providing park adjacent to the metro stations must be really urgent lest these lands, adjacent to the planned stations get developed in the wrong way making them not only unsuitable for acquisition but perhaps very expensive too. It seems to us that the metro itself was not going to be operational soon. It is not as if the line is already operational and train is going to arrive at the platform any minute. But what is urgent is that the property must be acquired before it is lost for ever. It is an opportunity that had to be seized. If the metro was to operate smoothly and provide efficient service to thousands of commuters, it was an obvious urgency. Therefore, the provisions were invoked to effectively deny an opportunity to persons interested to file objections. There was no way that the authorities were going to relocate the parking area or shift the stations to some other location or even consider releasing the property from acquisition because that way the metro project could have got indefinitely delayed.

Another interesting argument raised by the learned counsel for the petitioners was that notifications under Sections 4 and 6 of the Act were defective because they had been issued simultaneously. The declaration under Section 6 has to be issued after publication of the notification under Section 4 of the Act. Section 17 (4) provides that the Government may direct that provisions of Section 5-A shall not apply and if such a direction has been given then the declaration under section 6 can be made at any time after the date of the publication of the notification under Section 4. The date of publication of the notification under Section 4 is the last date of the date of publication and giving a public notice as required under Section 4 (1) of the Act.

In the present case, the notification under Section 4 was published in the official gazette on November 24, 2006 and substance of the notification was published in newspapers-Amar Ujjala (Hindi) on November 24, 2006 and National Herald (English) on November 29, 2006. The proclamation was also done in the village by beat of an empty cannister, an entry regarding which was made by the Patwari in the roznamcha on December 7, 2006. Similarly, the declaration under Section 6 read with Section 17 (1) of the Act was made on November 27, 2006 which published in the gazette but the publication in the newspapers was done on November, 29, 2006 in Hari Bhoomi (Hindi) and National Herald (English) on the same day. An entry regarding the public notice was also made in the roznamcha on December 7, 2006.

In the above chronology could it be said that Section 6 declaration was made after the notification was published under Section 4 of the Act ? The last date of the publication and giving of public notice is the date of notification. This had been clearly mentioned in Section 4 and also in Section 6 (2). If the date of notification under Section 4 was the last date of publication, i.e. December 7, 2006 and the date of publication of the declaration was also the last date of giving a public notice i.e. December 7, 2006, then quite obviously both the notifications had been published simultaneously which was not in accordance with law.

Reliance was placed on **State of Uttar Pradesh Versus Radhey Shyam Nigam and others 1989 LACC 186** in which it was categorically held that declaration under Section 6 and notification under Section 4 cannot be published simultaneously. Declaration under Section 6 has to be published after the date of publication of notification under

Section 4. Apart from the interpretation given in Radhey Shyam Nigam's case, even the provision of Section 17 (4) is quite explicit that declaration under Section 6 has to be made after the notification under Section 4 of the Act has been published. Therefore, what is required to be determined is whether there has been any infringement of this provision ? In order to do so one has to re-visit the two notifications. Sections 4 notification dated November 24, 2006 clearly provides that the Governor of Haryana was satisfied that the land was required for public purpose mentioned in the notification and the Governor of the Haryana was also pleased to assent that the purpose was urgent, Section 17 (1) of the Act was applicable and was pleased to direct that under Section 17 (4) of the Act, the provisions of sections 5-A of the Act shall not apply with regard to this acquisition. It was on November 24 itself that provision of Section 5-A had been dispensed with. This may not have been the date of publication of the notification because the publication in the newspapers was yet to be completed and the public notice in the locality was yet to be given but we are doubtful if the declaration under Section 6 has to wait until the last date of the notification under Section 4.

We are of the view that once the Government has formed an opinion that urgency provisions are applicable and directs that Section 5-A shall not apply, the declaration under Section 6 can be made the following day. In the present case, the Government had formed the opinion regarding the urgency provisions on November 24 and had also directed that Section 5-A shall not apply, therefore, the declaration made under Section 6 on November 27 was clearly not simultaneous. This was not a case of simultaneous publication, but there was a gap of three days. It is true that

by applying fiction of the last date of publication, the date of publication of the notification, both the notification under Section 4 and declaration under Section 6 would be the same date i.e. December 7, 2006. These date of publication given in Sections 4 and 6 are for the purpose of those sections only and may not be applicable while applying Section 17 (4). The argument was indeed ingenious but cannot be accepted.

As a result of the above discussion, we hold that the urgency provisions had been validly invoked to acquire the land for metro station. The declaration under Section 6 had been issued after gap of three days from the date of the notification under Section 4.

We find no merit in these petitions. Dismissed.

(K.S. GAREWAL)
JUDGE

May 18, 2007 **(AJAI LAMBA)**
prem **JUDGE**